IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

WP(C).No. 32442 of 2007(K)

PETITIONERS:

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1. MAHAMOOD IBRAHIM SAIT,
   MANAR, R.K.PILLAI ROAD,
   CHULLIKKAL, KOCHI-5.

2. IQBAL ISMAIL SAIT,
   ELARI ESTATE & RESORT PVT. LTD.,
   206, GOVIND APARTMENT, KALATHIL PARAMBIL ROAD,
   ERNAKULAM SOUTH, KOCHI-16.

3. S.M.MANSOOR,
   23/2241, ST. JOSEPH CONVENT ROAD,
   NEAR MOTHER TERESA JUNCTION,
   CULLIKKAL, COCHIN-2.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS:

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1. KERALA WAKF BOARD, REPRESENTED BY THE
   CHIEF EXECUTIVE OFFICER,
   NEAR INTERNATIONAL STADIUM, KOCHI-17.

2. P.M.KUNJU MOIDEEN KUTTY,
   ADVOCATE, MULLASSERICANAL ROAD,
   ERNAKULAM, KOCHI – 16.

BY ADV. SRI.P.A.ABDUL JABBAR, SC, WAKF BOARD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29/11/2007, THE COURT ON 4.12.2007 DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) No. 32442 OF 2007 K
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Dated this the 4th December, 2007

J U D G M E N T

The prayer in this writ petition is to quash Exts. P4 and P12 orders and also to direct the 1st respondent to approve the Muthawalli appointed in accordance with Exts. P1 to P3. Consequential reliefs are also sought for by the petitioners.

2. Though lengthy pleadings have been made by the petitioners, I am only noting the facts which are relevant for the disposal of this writ petition.

3. The controversy in this writ petition apparently has originated with Ext. P4 when the 1st respondent appointed an interim Muthawalli removing the petitioners. Petitioners challenged Ext. P4 by moving the Board with Ext. P5. They had also challenged Ext. P4 before this Court in W.P.(C) No. 30966/06 which was disposed of by Ext. P6. By this judgment, the Board was directed to appoint a Muthawalli keeping in view the objectives of the Wakf within a period of six weeks from the date of production of a copy of the judgment.

4. Against Ext. P6 judgment, petitioners filed W.A. No. 585/07. That appeal was disposed of giving liberty to the appellants to place all matters before the Wakf Board and directing that the Board will consider the matters and pass appropriate orders. Thereafter review of the judgment was sought for by the Wakf Board and Ext. P9 is the order rendered in R.P. No. 449/07. Considering the doubt expressed by the Board whether it had jurisdiction to decide the issue raised, the Division Bench of this Court directed that it will be open to the Board to consider the issue as to whether it had jurisdiction also.

5. Complaining of disobedience of the judgment in the writ appeal, Contempt of Court Case No. 957/07 was filed and that case was also disposed of by Ext. P10 judgment, recording the submission of the Board that the Wakf Board will hear the parties to the dispute on 11th July, 2007 and thereafter within fifteen days, they would pass appropriate orders.

6. Thereafter the Board passed Ext. P12 order finding that the matter in issue between the parties was one which has to be decided by a Civil Court and that till the disposal of the dispute by an appropriate authority the interim arrangement will

continue. It was also made clear that the Muthawalli shall not take any policy decision or make any financial commitment pending resolution of the dispute by an appropriate court. It is challenging Ext. P12 and seeking consequential prayers that the petitioners have filed this writ petition.

7. It is not in dispute that the petitioners have a statutory remedy available against an order in the nature of Ext. P12 by taking recourse to the provisions contained in Section 83(2) of the Wakf Act by moving the Wakf Tribunal. Despite this, petitioners contend that Ext. P12 was passed without hearing them and hence there has been violation of the principles of natural justice. It is on that ground, Ext. P12 was sought to be impugned in these proceedings filed under Article 226 of the Constitution of India.

8. A reading of Ext. P12 shows that the matter was posted for hearing on 11th July, 2007 and that order was also passed on the same day. In view of the positive assertion made by the petitioners that they were not heard on 11.7.2007, this Court directed the Board to file an affidavit answering the said contention of the petitioners. Thereupon the Board filed affidavit dated 23-11-007 where in para 6 it is stated that on 11.7.2007

the parties were represented by lawyers and that they were heard mainly on the issue of jurisdiction of the Board in the matter. This Court had also directed the Board to make available the files to verify whether the parties were heard as mentioned above. Accordingly, the Board also made available the file, in which the Chairperson has recorded in the proceedings dated 11.7.2007 thus: “Heard. Orders passed vide separate sheet.” Even inspite of this, the counsel for the petitioners was asserting that they were not heard before Ext.P12 was passed.

9. In a writ proceedings a disputed question of fact in the nature of the one raised in this case cannot be decided. Even otherwise, when the Wakf Board functions as a quasi-judicial authority, this Court can only go by the contents of the orders as to what transpired before that authority. If that be the standard to be adopted I cannot accept the plea of the petitioners, except in an extreme situation where it is plainly demonstrated that the contents of the orders or the files are incorrect. In this case, apart from making the bald averments and the submissions in the court, the petitioners have not placed anything to conclude that the contents of Ext. P12 or the endorsements in the note file

produced before me are incorrect. Therefore, on the materials available before me I am not in a position to accept the plea of the petitioners.

5. Counsel for the petitioners raised several contentions on the merits of the dispute between the parties. In view of the fact that an equally efficacious remedy is available before the Wakf Tribunal, I feel that the Tribunal will be in a better position to appreciate the contentions on facts and evidence. Therefore, without prejudice to the contentions raised including the question whether the petitioners were heard on 11.7.2007, and leaving open to the parties to raise their respective pleas before the Tribunal, I dismiss this writ petition.

ANTONY DOMINIC
JUDGE

jan/-